

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 16-3076, 16-3570

Caption [use short title] _____

Motion for: Intervenor USW's Motion For Permission to Delete Footnote 33
Of Its Page Proof Brief From Its Final Brief

Novelis Corporation,
 Petitioner-Cross Respondent

. v. _____

National Labor Relations Board

Respondent, Cross Petitioner

Set forth below precise, complete statement of relief sought:

Permission to Delete Footnote 33 from Union Intervenor's Page Proof

Brief from Union Intervenor's Final Brief

OPPOSING PARTY: Novelis Corporation

OPPOSING ATTORNEY: Robert T. Dumbacher, Esquire

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MOVING PARTY: Intervenor USW

☐ Plaintiff ☐ Defendant
☐ Appellant/Petitioner ☐ Appellee/Respondent

OPPOSING PARTY: Employee Intervenors John Tesoriero,
Michael Malone, Richard Farrands & Andrew Duschen

MOVING ATTORNEY: Richard J. Brean

[name of attorney, with firm, address, phone number and e-mail]

United Steelworkers Legal Department

60 Boulevard of the Allies, Room 807, Pittsburgh, PA 15222-1214

412-562-2530; rbrean@usw.org

OPPOSING ATTORNEY: Thomas G. Eron, Esquire

Bond, Schoeneck & King, PLLC, One Lincoln Center

Syracuse, New York, 13202-1355

315-218-8000; Teron@bsk.com

Court-Judge/Agency appealed from: National Labor Relations Board, 364 NLRB No. 101 (2016)

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):

☒ Yes ☐ No (explain): _____

**FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND
 INJUNCTIONS PENDING APPEAL:**

Has request for relief been made below?

☐ Yes ☐ No

Has this relief been previously sought in this Court?

☐ Yes ☐ No

Requested return date and explanation of emergency: _____

Opposing counsel's position on motion:

☒ Unopposed ☐ Opposed ☐ Don't Know

Does opposing counsel intend to file a response:

☐ Yes ☒ No ☐ Don't Know

Is oral argument on motion requested?

☐ Yes ☒ No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set?

☐ Yes ☒ No If yes, enter date: _____

Signature of Moving Attorney:

s/Richard J. Brean

Date: May 5, 2017

Service by:



CM/ECF



Other [Attach proof of service]

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

NOVELIS CORPORATION,)	
)	
Petitioner/Cross Respondent,)	
)	
JOHN TESORIERO, MICHAEL MALONE,)	
RICHARD FARRANDS, AND ANDREW)	
DUSCHEN,)	Case No. 16-3076
)	
Intervenors,)	Case No. 16-3570
)	
v.)	
)	
THE NATIONAL LABOR RELATIONS)	
BOARD,)	
)	
Respondent/Cross Petitioner,)	
)	
UNITED STEEL, PAPER AND)	
FORESTRY, RUBBER,)	
MANUFACTURING, ENGERGY, ALLIED)	
INDUSTRIAL AND SERVICE WORKERS)	
INTERNATIONAL UNION, AFL-CIO,)	
CLC,)	
)	
Intervenor.)	

**INTERVENOR USW’S MOTION FOR PERMISSION TO DELETE
FOOTNOTE 33 OF ITS PAGE PROOF BRIEF FROM ITS FINAL BRIEF**

Pursuant to Federal Rule of Appellate Procedure 27 and Local Rule 27.1,
Intervenor United Steel, Paper and Forestry, Rubber, Manufacturing, Energy,
Allied Industrial & Service Workers International Union, AFL-CIO, CLC, “USW”,
moves for permission to delete footnote 33 of its Page Proof Brief from its Final
Brief. The basis for this motion is set forth below.

1. On April 3, 2017, USW filed Intervenor USW's Motion Requesting Judicial Notice of the fact of the filing of the unfair labor practice charge in Case 03-CA-6193649 against Petitioner / Cross Respondent Novelis Corporation "Novelis".

2. The granting of this Motion was opposed by Novelis.

3. USW filed its Page Proof Brief in this Court on April 14, 2017.

4. Footnote 33 on page 48 of USW's Page Proof Brief states:

“³³ Presently pending before this Court is Intervenor USW's Motion Requesting Judicial Notice of the filing of the ULP charge on February 28, 2017 in Case Number 03-CA-193648 alleging in relevant part that Novelis unlawfully discharged USW adherent Brian Wyman on January 12, 2017. Judicial notice is sought for the fact of its filing not for the truth of the allegations contained in the charge. The filing of the charge, which is still under investigation by the NLRB, is not proof as to the likelihood of recurrence of ULPs by Novelis. It is anticipated that the Board will make its decision as to whether the charge has merit only after the briefing in these cases has been completed, and USW has filed its Motion solely to preserve this point for supplemental briefing in the event that the Board finds merit in the charge and issues a complaint.

5. On April 20, 2017, USW filed Intervenor USW's Motion to Withdraw Its Pending Motion Requesting Judicial Notice. The basis for this motion was “that USW is withdrawing the unfair labor practice charge in Case 03-CA-6193649, as to the filing of which judicial was sought, after being informed on April 19, 2017, by Region 3 of the NLRB that it will not be issuing complaint upon the charge and would dismiss the charge absent withdrawal.”

6. This Motion was unopposed.

7. On April 21, 2017, Clerk of Court Catherine O'Hagan Wolfe issued an Order stating in relevant part, "IT IS HEREBY ORDERED that the motion to withdraw is GRANTED. The motion for judicial notice on April 4, 2017 is deemed WITHDRAWN". A true copy of the April 21, 2017, Order, is attached hereto as Exhibit A.

8. In light of the April 21, 2017, Order, footnote 33 of USW's Page Proof Brief is misleading, and its consideration by the Court has the potential to interfere with the disposition of the cases before it. Consequently it should be deleted from USW's Final Brief.

9. It is necessary to secure permission of this Court to delete footnote 33 because otherwise USW would be compelled to include the footnote in its Final Brief under the requirement of FRAP 30 (C) (2)(B) that "Except for the correction of typographical errors, no other changes may be made to the [final] brief".

WHEREFORE, for good cause shown, Intervenor USW requests that this Motion be granted.

Dated: May 5, 2017

Respectfully submitted,

s/ Richard J. Brean

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Energy, Allied Industrial and Service
Workers International Union, AFL-CIO,
CLC*

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 21st day of April, two thousand and seventeen.

Novelis Corporation,

Petitioner - Cross - Respondent,

John Tesoriero, Michael Malone, Richard Farrands, Andrew
Duschen,

Intervenors,

v.

National Labor Relations Board,

Respondent - Cross - Petitioner,

United Steel, Paper and Forestry, Rubber, Manufacturing,
Energy, Allied Industrial & Service Workers International
Union, AFL-CIO, CLC,

Intervenor.

Intervenor United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers International Union, AFL-CIO, CLC, moves to withdraw its pending motion for judicial notice.

IT IS HEREBY ORDERED that the motion to withdraw is GRANTED. The motion for judicial notice filed on April 4, 2017 is deemed WITHDRAWN.

For the Court:
Catherine O'Hagan Wolfe,
Clerk of Court

Catherine O'Hagan Wolfe



EXHIBIT

A

CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2017, I electronically filed the foregoing Intervenor USW's Motion For Permission To Delete Footnote 33 of Its Page Proof Brief From Its Final Brief with Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the CM/ECF system. I certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Respectfully submitted,

s/ Richard J. Brean

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